

Atty. Dkt. No. 036481-0146

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Scott UMLAUF

Title: NUCLEIC ACID VACCINE COMPOSITIONS
HAVING A MAMMALIAN cd80/cd86 GENE
PROMOTER DRIVING ANTIGEN
EXPRESSION

Appl. No.: 10/748,124

Filing Date: 12/31/2003

Examiner: Unassigned

Art Unit: 3763

TRANSMITTAL

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith in the above-identified application is:

[X] Petition for Withdrawal of Holding of Abandonment under 37 C.F.R. § 1.137(b).

[X] Copy of Decision on Petition dated May 11, 2004 (USPTO Paper No. 19).

[X] Return Copy of Notice to File Missing Parts.

[X] Copy of Notice of Abandonment dated February 7, 2005.

The filing fee is calculated below:

	Claims as Filed	Included in Basic Fee	Extra Claims	Rate	Fee Totals
Basic Filing Fee				\$790.00	\$790.00
Total	41	20	21	x \$50.00	\$1050.00
Claims: Independents:	6	3	3	x \$200.00	\$600.00
If any Multiple Dependent Claim(s) present: Surcharge under 37 CFR 1.16(f) for late filing of Executed Declaration and late payment of filing fee				+ \$360.00	\$0.00
				+ \$130.00	\$130.00
				SUBTOTAL:	\$2,570.00
[]				Small Entity Fees Apply (subtract 1/2 of above):	0
				TOTAL FILING FEE:	\$2,570.00
Petition fee set forth in 37 CFR 1.17(m)				+ \$1300.00	\$1,500.00
					\$4,070.00

TOTAL FEE DUE

[X] Check in the amount of \$4,070.00 to cover the above fees is enclosed.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Respectfully submitted,

Date April 5, 2005

By Richard Peet

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5483
Facsimile: (202) 672-5399

Richard C. Peet
Attorney for Applicant
Registration No. 35,792



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Appl. No.: 10/748,124

Filing Date: 12/31/2003

Examiner: Unassigned

Art Unit: 3763

**PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT
UNDER 37 C.F.R. § 1.137(b)**

Mail Stop PETITION
Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

This Petition is in reply to the Notice of Abandonment mailed February 7, 2005. Applicant hereby petitions for withdrawal of the holding of abandonment, due to Applicant's failure to reply to the Notice to File Missing Parts dated June 1, 2004.

The entire delay was unintentional and, unfortunately, due to the Office's mailing of the Notice to File Missing Parts to the previous address of record, namely to Chiron Corporation, in Emeryville, California, instead of to the address of the undersigned in Washington, D.C.

Indeed, in their Preliminary Amendment Transmittal dated April 30, 2004, the undersigned requested that the Patent Office "direct all correspondence to the undersigned" at Foley & Lardner, customer number 27476. Accordingly, the Office did then send a Notice granting a prior Petition to Revive to Foley & Lardner LLP's Madison office (150 East

04/06/2005 SFELEKE1 00000007 10748124

05 FC:1453

1500.00 OP

002.1354165.1

Gilman Street, P.O. Box 1497, Madison, Wisconsin, 53701). See USPTO Paper No. 19, dated May 11, 2004 (copy attached).

Applicant took this address change to mean that the Patent Office had duly noted the change in correspondence address. Nevertheless, Applicant still filed a Correspondence Address Change notification on July 1, 2004.

Unfortunately, between May 11, 2004, and July 1, 2004, the Notice to File Missing Parts dated June 1st was still addressed and mailed to Chiron Corporation in California. The undersigned, therefore, never received a copy of the Notice and, consequently, was not able to file a reply before the end of the fourth extension, December 1, 2004.

Applicant takes this opportunity, therefore, to reply to the Notice to File Missing Parts (copy attached) by submitting the required statutory application filing fee, the late filing fee, and the Petition fee set forth in 37 CFR 1.17(m), as well as a copy of the Notice of Abandonment dated February 7, 2005. In view of the foregoing, Applicant requests that the Patent Office withdraw the holding of abandonment of this application and return the application to pending status.

Since this Petition is being filed within two months of the mailing date of the Notice of Abandonment, Applicant submits that the Petition is timely under 37 C.F.R. § 1.181(a). No fee is believed to be due, but the Commissioner is authorized to charge any deficient fees, or credit any overpayment, to Deposit Account No. 19-0741. See MPEP 711.03(c) sec. I. The Examiner is invited to contact the undersigned by phone to expedite this process.

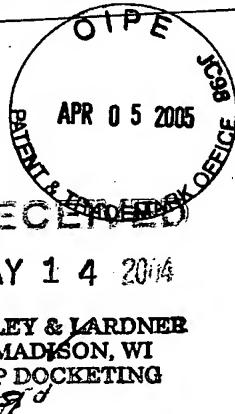
Respectfully submitted,

Date April 5, 2005
FOLEY & LARDNER
Customer Number: 22428
Telephone: (202) 672-5483
Facsimile: (202) 672-5399

By Richard C. Peet
Richard C. Peet
Attorney for Applicant
Registration No. 35,792



UNITED STATES PATENT AND TRADEMARK OFFICE



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 19

Foley & Lardner
150 East Gilman Street
P. O. Box 1497
Madison, WI 53701-1497

FOLEY & LARDNER
MADISON, WI
IP DOCKETING

In re Application of
Scott Umlauf
Application No. 09/705,022
Filed: November 1, 2000
Attorney Docket No. 036481-0116

COPY MAILED

MAY 11 2004

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 31, 2003, to revive the above-identified application.

The petition is **GRANTED**.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application Nos. 10/747,198 and 10/748,124.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), it will be interpreted as the required statement. Petitioner must notify the Office if this is not a correct interpretation of the statement contained in the instant petition.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Since the \$2010 extension of time fee submitted with the present petition was subsequent to the six-month statutory period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-347.

The application file is being forwarded to the Files Repository.

Marianne E. Morgan
Marianne E. Morgan

Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy



O I P E
APR 05 2005
JC98
PATENT & TRADEMARK OFFICE

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/748,124	12/31/2003	Scott Umlauf	036481-0146

27476
Chiron Corporation
Intellectual Property - R440
P.O. Box 8097
Emeryville, CA 94662-8097

CONFIRMATION NO. 1736

FORMALITIES LETTER



OC000000012834692

Date Mailed: 06/01/2004

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

04/06/2005 SFELEKE1 00000007 10748124

01 FC:1001	790.00	OP
02 FC:1051	130.00	OP
03 FC:1201	600.00	OP
04 FC:1202	1050.00	OP

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

Items Required To Avoid Abandonment:

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.
Applicant must submit \$ 770 to complete the basic filing fee for a non-small entity. If appropriate, applicant may make a written assertion of entitlement to small entity status and pay the small entity filing fee (37 CFR 1.27).
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.

The applicant needs to satisfy supplemental fees problems indicated below.

The required item(s) identified below must be timely submitted to avoid abandonment:

- Additional claim fees of \$636 as a non-small entity, including any required multiple dependent claim fee, are required. Applicant must submit the additional claim fees or cancel the additional claims for which fees are due.

SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is \$1536 for a Large Entity

- \$770 Statutory basic filing fee.
- \$130 Late oath or declaration Surcharge.
- Total additional claim fee(s) for this application is \$636

- \$258 for 3 independent claims over 3.
- \$378 for 21 total claims over 20.

Replies should be mailed to: Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

*A copy of this notice **MUST** be returned with the reply.*


Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 3 - OFFICE COPY



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
PO Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY, DOCKET NO/TITLE
10/748,124	12/31/2003	Scott Umlauf	

22428
FOLEY AND LARDNER
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

CONFIRMATION NO. 1736

ABANDONMENT/TERMINATION
LETTER



OC000000015123998

Date Mailed: 02/07/2005

NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 06/01/2004.

- No reply was received.

If a complete reply to the notice was previously filed by applicant within the time period set forth in the notice, applicant may request for reconsideration of the holding of abandonment within 2 months from the mailing of this notice of abandonment by filing a petition to withdraw the holding of abandonment under 37 CFR 1.181(a). No petition fee is required. The petition must be accompanied by a true copy of the originally filed reply and the item(s) identified in one of the following:

1. A properly itemized date-stamped postcard receipt (see MPEP § 503);
2. If the originally filed reply included a certificate of mailing or transmission in compliance with 37 CFR 1.8(a), a copy of the certificate of mailing or transmission and a statement in compliance with 37 CFR 1.8(b) (see MPEP §§ 512); or
3. If the reply was filed via Express Mail, a submission satisfying the requirements of 37 CFR 1.10(e) including, for example, a copy of the Express Mail mailing label showing the "date-in" (see MPEP § 513).

Any petition to withdraw the holding of abandonment should be directed to OIPE.

If applicant did not previously file a complete reply within the time period set forth in the notice, applicant may file a petition to revive the application under 37 CFR 1.137.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(i); and (4) a terminal disclaimer if required by 37 CFR 1.137(d). See MPEP § 711.03(c) and Form PTO/SB/61.

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-

identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(d). See MPEP § 711.03(c) and Form PTO/SB/64.

Any questions concerning petitions to revive should be directed to the "Office of Petitions" at (703) 305-9282. Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

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*A copy of this notice **MUST** be returned with the reply.*

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 3 - OFFICE COPY